

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1463 OF 2004

Indo French Biotech Enterprises
Ltd. and another ... Petitioners
versus
Krishna Texports & Markets Ltd.
and others ... Respondents

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Mr. Ashok Bhatia, for the Petitioners.

Mr. Kiran Kulkarni with Ms. Kamaldeep Sagar, for
Respondent No.1.

Mr. V.B. Konde Deshmukh, A.P.P., for the State.

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CORAM : A.M.KHANWILKAR, J.

28th January 2005

P.C.:

1. Heard Counsel for the parties. The only contention raised before me is that the suit notice is invalid, as it does not conform to the requirement of section 138 of the Negotiable Instruments Act. Inasmuch as the notice makes no

reference to the cheque amount. This submission clearly overlooks that on fair reading of the suit notice, it is seen that the cheque number and the date on which the cheque was issued is provided in the notice. Besides, by the said notice, the Petitioners are called upon to pay the amount referred to in the cheque in question within stipulated time. To my mind, there is substantial compliance of section 138 of the Act. Counsel for the Petitioners, however, placed reliance on the decision of the Apex Court in the case of Suman Sethi v. Ajay K. Churiwal and another, reported in (2000) 2 S.C.C. 380, as well as in the case of K.R. Indira v. Dr. G. Adinarayana, reported in 2004 Cri.L.J. 5. In my opinion, reliance placed on these decisions is ill-advised. Taking the second case first, in that case, the fact situation was that the suit notice did not make demand in respect of cheque amount, but only in respect of the loan amount. On that reasoning, the Supreme Court proceeded to hold that the notice was imperfect. In the case of Suman Sethi (supra), the Apex Court has indeed observed that the notice should make reference to the cheque amount. However, what has been

glossed over by the Counsel for the Petitioner is that it has been repeatedly held by the Apex Court that the notice has to be construed liberally. In the present case, the notice is very clear as it refers to specific cheque, the fact of dishonour of that cheque upon presentation and it also calls upon the Petitioner to pay the amount referred to in the said cheque. This, in my opinion, is substantial compliance of section 138 of the Act. Hence, no interference is warranted. Rejected.

(A.M.KHANWILKAR, J.)